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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,248	12/01/2003	Sharon Ann Norton	P145	1932

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THE PROCTER & GAMBLE COMPANY  
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EXAMINER

CLARK, AMY LYNN

ART UNIT	PAPER NUMBER
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1655

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/725,248

Applicant(s)

NORTON ET AL.

Examiner

Amy L. Clark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 24-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

Applicant's response was received 12 April 2006 and is found under "Applicant Arguments/Remarks Made in an Amendment".

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-53 are currently pending.

The claims have been examined, insofar, as they read on the elected invention, namely beet pulp. This application contains claims drawn to an invention nonelected with traverse under "Response to Election / Restriction Filed", which was received on 13 December 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

**Currently, Claims 1-12 and 14-23 are under examination.**

### ***Claim Rejections - 35 USC § 112***

Claims 1-12 and 14-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Please note, the claims to which the rejection was directed were originally written incorrectly as 1-23. Since Claim 13 is withdrawn from consideration, the claims rejected both in this Office Action and the previous Office Action are 1-12 and 14-23. The rejection is maintained for the reasons set forth in the previous Office Action and for the reasons set forth below.

Applicant argues that the phrase "at least about" is defined fully in the specification and Applicant states that by "total fermentable fiber" it is mean that the referenced level is determined by adding the relative amounts of each fermentable fiber present in the composition. Applicant's arguments have been fully considered but they are not found persuasive for the reasons set forth in the previous Office Action and for the reasons set forth below.

Regarding claims 1-12 and 14-23, the phrase "at least about" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. The phrase "at least" means at a minimum 0.25% and the term "about" means approximately "0.25%". Both "at least" and "about" are ambiguous when used together since it is unclear whether Applicant means "at least" 0.25% or "about" 0.25% since "at least" 0.25% is different than "about" 0.25% and the two are not interchangeable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

Claims 1, 2, 6-9, 14, 15 and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Farang et al. (A\*), as evidenced by <http://en.wikipedia.org/wiki/Food> (U\*), [http://web.archive.org/web/\\*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705](http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705) (V\*) and <http://dictionary.reference.com/search?q=companion&r=66> (W\*). The rejection is maintained for the reasons set forth in the previous Office Action and for the reasons set forth below.

Applicant argues that not all elements of the invention are taught by Farang in that the present invention requires at least about 0.25% of total fermentable fiber by weight of the composition wherein the composition is a liquid adapted for use by a companion animal and Applicant argues that Farang does not teach or suggest a composition comprising at least about 0.25% of total fermentable fiber and that Farang does not teach the composition is adapted for use by a companion animal, wherein "companion animal" is defined as a domestic dog, cat, rabbit, ferret, horse, cow or the like (Applicant cites Page 3, lines 15-16, presumably within the specification).

Applicant's arguments have been fully considered but they are not persuasive for the reasons set forth in the previous Office Action and for the reasons set forth below.

Farang teaches a stable, bland, free flowing food supplement (please note that food is defined as any substance that can be consumed, including liquid drinks and that food is the main source of energy and of nutrition for animals, as taught by <http://en.wikipedia.org/wiki/Food>) comprising sugar beet pulp, which has a chemical composition of about 4-8% by weight water, 7-9% crude protein, which reads on a nutrient, about 15-25% crude fiber (please note that the fiber in beet pulp is insoluble and moderately fermentable, as taught by [http://web.archive.org/web/\\*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705](http://web.archive.org/web/*/http://www.peteducation.com/article.cfm?cls=1&cat=1399&articleid=2705), on page 1, paragraph 3, found in the section entitled "The benefits of beet pulp"), which anticipates the range of "at least about 0.25%, since "at least about" presumably means at least approximately 0.25% (this is interpreted to be any amount above about 0.25%) and the amount of fiber, which is taught by Farang to be 15-25%,

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falls within the range claimed. Farang further teaches a supplement further comprising about 60-70% nitrogen-free extracts and about 2.5-5% ash (See column 4, claim 9).

Farang further teaches that the food supplement may be used in gravies, soups, sauces, dips and batters as well as in imitation fruit drinks (See column 1, lines 54-62 and column 3, lines 38-49). Although the Office notes that the specification defines companion animals as domestic dog, cat, rabbit, ferret, horse, cow or the like, please note that "or the like" includes human beings particularly since human beings **are** "companion animals". Please note that humans are defined to be mammals, which is synonymous with animal and companion is defined as "a person who accompanies or associates with another" (See

<http://dictionary.reference.com/search?q=companion&r=66>). Furthermore, the intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting. "[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433

(CCPA 1977). See also MPEP § 2112.01 with regard to inherency and product-by-process claims.

Claims 1-5 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Suzuki et al. (B\*), as evidenced by <http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861689414> (X\*) and <http://dictionary.reference.com/search?q=companion&r=66> (W\*). <http://dictionary.reference.com/search?q=companion&r=66> Newly applied as necessitated by Amendment. The rejection is maintained for the reasons set forth in the previous Office Action and for the reasons set forth below

Applicant argues that not all elements of the invention are taught by Suzuki in that Suzuki does not teach a composition comprising 0.25% of total fermentable fiber by weight of the composition, wherein the composition is adapted for use by a companion animal, wherein "companion animal" is defined as a domestic dog, cat, rabbit, ferret, horse, cow or the like (Applicant cites Page 3, lines 15-16, presumably within the specification). Applicant's arguments have been fully considered but they are not persuasive for the reasons set forth in the previous Office Action and for the reasons set forth below.

Suzuki teaches an agent for preventing, inhibiting or treating hypertension, comprising two distinct components, which by definition is a composition (See abstract). Suzuki further teaches these components are a compound selected from the group consisting of caffeic acid, chlorogenic acid and ferulic acid, and esters and

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pharmaceutically acceptable salts thereof and a component selected from the group consisting of central nervous system stimulating components, food fibers, extracts of perennial evergreen leaves, etc (See abstract). Suzuki further teaches that the food fibers in the composition include beet fibers obtained from beet pulp (See paragraph 0026) in a proportion of 0.001 to 1% (See paragraph 0025). Suzuki further teaches that when food fiber is used, the composition is in the form of a drink or a food (See paragraph 0029) and that when the food fiber is used, it is contained in a proportion of 0.1-20% (See paragraph 0030). Suzuki further teaches the drink comprising of the composition contains 82.1-83.6% water (paragraph 0085 and "Table 11"), which is suitable for drinking (please note that drinking water is defined as water intended for people to drink, as taught by

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=186168>

[9414](#)), since Suzuki further teaches that the drink containing the composition and 82.1-83.6% water were given to humans (See paragraph 0087). Although the Office notes that the specification defines companion animals as domestic dog, cat, rabbit, ferret, horse, cow or the like, please note that "or the like" includes human beings particularly since human beings are "companion animals". Please note that humans are defined to be mammals, which is synonymous with animal and companion is defined as "a person who accompanies or associates with another" (See

<http://dictionary.reference.com/search?q=companion&r=66>). Furthermore, the intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be



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limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting. "[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). See also MPEP § 2112.01 with regard to inherency and product-by-process claims.

Claims 1, 2, 4-12, 14, 15 and 18-23 are rejected under 35 U.S.C. 102(a) as being anticipated over Cheuk et al. (C\*).

Applicant argues that not all elements of the invention are taught by Cheuk in that Cheuk does not teach a composition comprising 0.25% of total fermentable fiber by weight of the composition. Applicant's arguments have been fully considered but they are not persuasive for the reasons set forth in the previous Office Action and for the reasons set forth below.

Cheuk teaches a canine pet food composition comprising meat, which Cheuk teaches contains 15-25% protein (See paragraph 0037) and 5-15% fat (See paragraph 0037), vitamins and minerals (See paragraph 0040) and beet pulp (which inherently

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contains insoluble fiber), in an amount of about 8 wt%-16 wt% (See paragraph 0047), which anticipates the range of "at least about 0.25%, since "at least about" presumably means at least approximately 0.25% (this is interpreted to be any amount above about 0.25%) and the amount of fiber, which is taught by Cheuk to be 8 wt%-16 wt% falls within the range claimed, in the form of a chunk and gravy composition (See paragraph 0051 and Claim 4). Cheuk further teaches that a grain, which may be beet pulp (See paragraph 0040), is mixed with water to achieve hydration and gelatinization of the grain. Cheuk further teaches mixing the gravy that ensues (please note that gravy is a thickened sauce, which may be gelatinous) with meat that has been heated to a temperature at or below the denaturation point of the meat portion (please note that gravy can be further defined to include juices and extractives of meat during cooking to form a thickened sauce) (See Claim 4). Cheuk does not expressly teach a composition comprising from about 0.1% to about 20% of total fermentable fiber, however Cheuk teaches an amount of fermentable fiber which falls within the range claimed by Applicant, therefore, Cheuk anticipates the claimed subject matter.

**No claims are allowed.**

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amy L. Clark  
AU 1655

Amy L. Clark  
June 16, 2006

  
MICHELE FLOOD  
PRIMARY EXAMINER